IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5200 of 2007
Date of decision 19. 10 .2007

Commissioner of Central Excise, Delhi III, Gurgaon .. Petitioner

Versus

M/s Carrier Aircon Limited, Gurgaon and another .Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Gurpreet Singh, Advocate for the petitioner
Mr.R.Krishnana, Advocate with
Mr. Manish Jain, Advocate for respondent no.1.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for partial quashing of order dated 8.2.2005 (Annexure P.3) passed by the Custom and Central Excise Settlement Commission- respondent no.2 (for brevity 'the Settlement Commission') granting immunity to the assessee-respondent no.1 from payment of interest amounting to Rs.7,16,775/-. Further prayer has been made for setting aside order dated 22.6.2005 (Annexure P.5) dismissing the miscellaneous application seeking rectification of the order dated 8.2.2005.

Brief facts may first be noticed. The assesee- respondent no.1 is engaged in the manufacturing of Air Handling Units, Chillers and parts thereof falling under tariff heading 84 (84.15) of the Ist schedule to the Central Excise Tariff Act, 1985 (for brevity ' the 1985 Act') and is also registered with the Central Excise Department. It has been availing modvat/ cenvat credit on various inputs and discharging the obligation of excise duty on the final products cleared from the factory. On 11.2.2003, the officers of the Director General Central Excise Intelligence visited the factory premises

of the assessee- respondent no.1 and found that the cenvat credit of Rs. 27,26,092/- was availed by the assessee- respondent no.1 on the inputs which infact were written off on 31.12.2001. Thereafter, the assessee-respondent no. 1 on its own volition reversed the aforesaid cenvat credit vide PLA Entry No.11 dated 15.7.2003. It paid interest amounting to Rs. 7,16,775/- at the stage of investigation.

The assessee- respondent no.1 was issued a show cause notice on 20.1.2004 raising demand of central excise duty of Rs. 27,26,092/- in the cenvat credit availed on inputs on 31.12.2002. It was proposed to impose penalty under Section 11 AC of the Act read with Rule 25 of the Central Excise Rules, 2001 (for brevity 'the 2001 Rules'). The show cause notice also raised the demand of interest under Section 11 AB of the Act read with Rule 12 of Cenvat Credit Rules, 2001 (for brevity 'the Cenvat Rules'). The show cause notice also raised demand of interest under Section 11 AB of the Act read with Rule 12 of the Cenvat Rules. According to the show cause notice the assessee- respondent no.1 was to show as to why the afore-mentioned amount be not appropriated to cenvat credit/ interest.

The assessee- respondent no.1 filed an application under Section 32 of the Act before the Settlement Commission- respondent no.2. The application was disposed of by a final order dated 8.2.2005 (Annexure P.3). According to the final order, the Settlement Commission found that the assessee- respondent had already paid a sum of Rs. 34,42,867/- against the demand duty amounting to Rs. 27,26,092/- in respect of the demand relating to appropriation of interest. The Settlement Commission noticed letter dated 24.1.2005 sent by the Additional Commissioner of Central Excise, Delhi stating that there was inadvertent error and para 2 of the order appropriating

interest of Rs 7,16,775/- infact stood deleted. The Settlement Commission had also found that the assessee- respondent had fully cooperated by making true and full disclosure of their duty liability, accepted and agreed to adjust the entire amount of duty out of the amount paid before issuance of show cause notice. Accordingly, the whole matter was settled in terms of Section 32 F of the Act by observing as under:

> " *Duty of Central Excise*- As the entire amount of Rs.27,26,092/- has already been directed to be adjusted from the amount deposited by the main applicant against demand of duty equal amount under Admission Order No. A-270-/ CES/2004- SC (P.B.) dt. 27.10.204, the case is settled at this amount and no further duty liability rests at the applicant's end.
>
> *Interest*- The applicants are granted immunity from payment of any interest in consideration of merit of the case as well as in view of the decision of the Hon'ble Supreme Court cited by the applicants.
>
> *Fine and penalty* – The Commission extends immunity from payment of fine and penalty to all the applicants in sos far as the present case is concerned.
>
> *Prosecution* - The applicants are granted immunity from prosecution under the Central Excise Act,1944 in so far as the present case is concerned.
>
> *Refund* – The balance amount of Rs.7,16,775/- (Rupees seven lakhs sixteen thousand seven hundred and seventy five)_ paid as interest should be refunded to the main applicant by the respondent Commissioner within 30 days from receipt of this

order"

Mr. Gurpreet Singh, learned counsel for the petitioner has argued that the Settlement Commission could not have ordered refund of interest amounting to Rs. 7,16,775/- because interest was recoverable by virtue of the provisions of Section 11 AC of the Act because the amount of duty as well as interest was voluntarily paid by the assessee- respondent no.1 before the issuance of show cause notice and after detection of the same by the staff of Director General Central Excise Intelligence. He has also submitted that the Settlement commission did not have the jurisdiction to delete interest and order its refund.

Mr. R. Krishnana, learned counsel for the assessee- respondent no.1 has submitted that the Settlement Commission is fully empowered to grant immunity from prosecution, payment of penalty and interest under Section 32 K of the Act and therefore it cannot be argued that the impugned order suffers from any illegality. According to the learned counsel the Settlement Commissioner does not require to give any detailed reasons in support of its order as has been held by Hon'ble the Supreme Court in the case of Jyotendrasinhji v. S.I.Tripathi and others (1993) 201 ITR 611(SC) and argued that it is not possible for the Courts to fathom the reasons which prevailed upon the Commission to pass a particular order. According to the learned counsel the judgement in S.I.Tripathi's case (supra) also was rendered under the Income Tax Act yet the provisions are pari materia and therefore the view taken by Hon'ble the Supreme Court would fully apply to the facts of the present case.

We have perused the paper book and examined the rival contentions of the parties and are of the view that this petition lacks merit. It

would be profitable to make a reference to Section 32 K(1) of the Act (as it stood at the relevant time), which reads as under:

> " Section 32 K. *Power of Settlement Commission to grant immunity from prosecution and penalty*- (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under Section 32 E has cooperated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, fine and interest under the Act, with respect to the case covered by the settlement;
>
> Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under Section 32 E."

A plain reading of the afore-mentioned provisions makes it clear that the Settlement Commission is clothed with ample powers to grant immunity to an assessee from prosecution, whole or in part from imposition of any penalty, fine and ***interest*** under the Act with respect to the cases covered by the settlement. It follows that the order granting immunity to the assessee-respondent no.1 is wholly within the para meters of Section 32 E of the Act and the Settlement Commission is clothed with the power to grant

immunity from payment of interest.

The order passed by the Settlement Commission can no doubt be challenged before this Court or before Hon'ble the Supreme Court under Article 32 of the Constitution yet the enquiry envisaged is limited as to whether the order is contrary to any provisions of the Act or suffers from bias, fraud or malice. In support of the afore-mentioned conclusion, we place reliance on the judgement in S.I.Tripathi's case (supra). The following observations determines the area of judicial scrutiny by this Court or by Hon'ble the Supreme Court which reads thus:

> "…. Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the Commission to make a particular order, unless the Commission itself chooses to give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above, viz. whether it is contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice ( audi alteram partem) has been incorporated in Section 245 D itself. The sole overall limitation upon the Commission thus appears to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by the High Court under Article 226

> or by this Court under Article 136 is also the same- whether the order of the Commission is contrary to any of the provisions of the Act and if so, apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category, has it prejudiced the petitioner/ appellant. Reference in this behalf may be had to the decision of this Court in R.B.Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission ( I.T. And W.T.) [1989] 176 ITR 169, which too was an appeal against the orders of the Settlement commission. Sabyaschi Mukharji J., speaking for the Bench comprising himself and S.R.Pandian J., observed that in such a case, this Court is " concerned with the legality of the procedure followed and not with the validity of the order". The learned Judge added " judicial review is concerned not with the decision but with the decision making process"....."

It is necessary to point out that the afore-mentioned observations were made in a case involving the provisions of Section 245 A of the Income Tax Act, 1961 which deals with settlement of cases. The provisions of Chapter XIX A are broadly akin to the provisions of Chapter V of the Act which is in question in the present case. Therefore, the principles discernible from the judgement of Hon'ble the Supreme Court in the case of S.I.Tripathi (supra) would apply to the facts of the present case.

When the facts of the present case are examined in the light of the afore-mentioned principles then it becomes clear that there is no violation of any provision of the Act. The Settlement Commission is fully clothed with the power to grant immunity from payment of interest apart

from other immunities as per the provisions of Section 32J of the Act. There is no issue before us with regard to any bias or violation of the procedural formalities which may warrant interference of this Court. Therefore, the writ petition is devoid of merit and the same is liable to be dismissed.

In view of the above, this petition fails and the same is dismissed.

**(M.M.Kumar)**
**Judge**

**(Ajay Kumar Mittal)**
**Judge**

**19 .10.2007**
**okg**